

Court Curbs Police Bugging

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The Supreme Court struck down the eavesdropping law of New York State yesterday, but stopped short of declaring that electronic eavesdropping is always unconstitutional.

By a 5-to-4 vote the Court held that the State law permitting court-authorized microphone "bugging" was unconstitutional on its face for failure to provide sufficient safeguards for the right to privacy.

A sixth vote, that of Justice Potter Stewart, was cast for reversal of the bribery conviction of public relations man Ralph Berger because the eavesdropping was based on insufficient "probable cause" to justify the invasion of privacy involved.

The majority opinion of Justice Tom C. Clark indicated that there still was room for a carefully drafted law permitting eavesdropping by court order for limited periods under more restricted conditions. Dissenting Justices Byron R. White, John M. Harlan and Hugo L. Black insisted that the Court had erected too many restrictions to make any eavesdropping practice effective.

Clark said New York's law was a "broadside authorization" that "permits general searches," giving officers "a roving commission to seize any and all conversations."

He said the law fails to require an officer's belief that any particular offense is being committed and does not demand specific descriptions of the conversations the officer wants to overhear.

In addition, said Clark, the New York law fails to require prompt execution of eavesdrop authorizations, allows use of the bugs at any time and for lengthy periods of sur-

veillance, and does not provide subsequent notice to the target of the eavesdropping.

By calling the eavesdropping a "search," Clark scrapped the Court's 1928 ruling in the famous case of *Olmstead v. U.S.* that electronic snooping could be undertaken free from any restrictions of the 4th Amendment.

Justice Clark denied that the evidence shows bugging to be an indispensable law enforcement tool and added that "there has been no failure of law enforcement" despite recent Government bugging disclosures that have brought reversals of convictions.

"In any event," Justice Clark said, "we cannot forgive the requirements of the 4th Amendment in the name of law enforcement. This is no formality that we require today but a fundamental rule that has long been recognized as basic to the privacy of every home in America... Few threats to liberty exist which are greater than that posed by the use of eavesdropping devices."

The decision overturned the one-year prison term given to Berger for conspiring to bribe the chairman of the New York Liquor Authority to obtain hard-to-get licenses for a Playboy club and a supper club.

Black's dissent contended that the Court did not have the responsibility for "keeping the Constitution up to date" with electronic advances. Harlan chided Clark for past opinions in which he has criticized striking down laws as unconstitutional "on their face." White, a former Deputy Attorney General, said it was "beyond my comprehension" that the Court could disregard contrary reports of President Johnson's National Crime Commission regarding a breakdown in Federal law enforcement.